

# BUFFALO STATE COLLEGE

## DIRECTORY OF POLICY STATEMENTS

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**Subject: Compensatory Time/Professional Service**

### Introduction

In the 1991 round of collective negotiations with UUP, the union took the position that many supervisors and campus administrators were not familiar with compensatory time and so had denied employees use of compensatory time. As a result, UUP asked that the 1987 Memorandum to Presidents from Dr. Burke be reissued. Through discussions engendered at the time, it became apparent that some campuses continued to have questions about the accrual and use of compensatory time. In an effort to bring clarity to the issue, this memorandum describes the rules applicable to compensatory time that have been developed over the years.

### Definition

A certain amount of confusion has arisen over the very use of the words "compensatory time". This is because there is more than one kind of compensatory time. In addition to the compensatory time that will be described below, there are at least two other forms of compensatory time available to employees in the Professional Services Negotiating Unit. The first of these is holiday compensatory time accorded under subdivisions 23.5(b), (c) and (d) of the 1991-95 State – UUP Agreement. An employee who is eligible to observe holidays is entitled to a compensatory day off when the holiday falls on a Saturday, Sunday, or a pass day or when he or she must work on the holiday. Compensatory days off are to be scheduled within three months, at times mutually convenient to the employee and the University.

A second kind of compensatory time is available under the Fair Labor Standards Act. Those individuals who have been designated non-exempt under the Act are entitled to compensatory time off at a rate of time-and-one-half for work in excess of 40 hours per week and, after accruing 240 hours of compensatory time off, are entitled to premium pay at a rate of time-and-one-half.

The Compensatory Time described in detail below might more accurately be called "non-holiday, non-FLSA compensatory time". To distinguish this kind of compensatory time, it will be described in the text that follows. This Compensatory Time is available, with prior approval, to all members of the professional service of the University.

### General Guidelines

The first formal mention of Compensatory Time is found in the 1972 Memorandum to Presidents from Ken MacKenzie, then Vice Chancellor for Personnel and Employee Relations. That memorandum dealt primarily with the procedures applicable to extra service compensation. In addition, the topic of Compensatory Time was briefly referred to in that memorandum as follows:

“The following policies continue applicable to performance of service beyond that normally required by the professional obligation:

No member of the professional staff is eligible for payment of overtime. Thus, for example, additional payment to an associate dean for evening or weekend service is not possible. If such service is required by the Chief Administrative Officer, it should be officially recognized by compensatory time off at a later date.”

This portion of the memorandum was reissued in 1983 by Dr. Smoot and in 1987 and 1992 by Dr. Burke. The basic concept is to provide the campus with a means to recognize employee service that has gone well beyond the duration of the normal professional obligation on a given day by allowing the employee to be absent from the work location for some period of time at a later date without charge to accruals. The Fair Labor Standards Act, which was made applicable to the public sector after this memorandum was originally written, now means that certain professional titles are eligible for overtime, and so modifies the first sentence of the MacKenzie memo. Nevertheless, the Compensatory Time rules remain unchanged for the bulk of the titles in the Professional Service.

There are several principles to keep in mind when administering Compensatory Time. First, the benefit applies only to required service above and beyond the normal professional obligation. Questions have been repeatedly asked regarding how one can identify the normal limits of the professional obligation. Those who seek a simple quantitative definition will be disappointed. Article XI, Title H 2 of the Policies of the Board of Trustees provides a general definition of professional obligation. This definition allows great variability. Each employee's professional obligation will vary, depending upon the client base to be served, the specific assignments given, the performance program, and any cyclical aspects of the employee's job such as registration, the start of classes, athletic events and the like. Normal duties will often include some weekend and evening activities, so work during those times is not invariably beyond the normal professional obligation.

Second, prior approval must be obtained for an employee to be eligible to accrue and use Compensatory Time. While the 1972 and subsequent memoranda refer to official recognition of compensatory time, most campuses have delegated this authority in practice to the immediate supervisor or unit head. For example, an employee who is required to work into the early morning hours to complete an emergency project, by arrangement with the immediate supervisor, might not report to work until noon on the following day even though the office is open to service clients at 8:00 am.

While Compensatory Time administration is normally expected to be between the employee and the supervisor, management retains the inherent responsibility for attendance monitoring. Therefore, particularly in cases of suspected or actual abuse, the administration retains the right to assign a reviewer to monitor all aspects of Compensatory Time assignments and use or to correct inappropriate application of the benefit.

Third, non-holiday Compensatory Time is distinctly different from other types of leave in that it is not usually reported, recorded, or administered on a centralized basis; and is not accrued at a specific rate. The entire transaction can occur between the employee and the immediate supervisor without notation on the monthly attendance report form and is simply reflective of the flexibility in scheduling attendant to the overall performance of a professional obligation.

In negotiations for the 1991 agreement, the union contended that the informal nature of the recordkeeping could mean that an employee's monthly report of absences would show that the employee was working when, in fact, the employee was off on Compensatory Time. As a result, a form was developed to use for those employees who were concerned about this issue. It should be executed by the employee and the individual authorized to approve compensatory time, normally the supervisor, if the employee requests it. The text of the memorandum is as follows:

“This memorandum shall confirm our mutual agreement that you will not be reporting to your work station on (DATE) for the full time that office is normally open. The use of this time is in recognition of the services you have performed beyond your normal professional obligation as provided for under the Burke memorandum dated December 1992. For attendance purposes, you are regarded as having been present at that date sufficient to meet your required professional obligations.”

Compensatory Time is not subject to accumulation in the same way that vacation is. Therefore, when an employee leaves State service, there is no payment for this type of Compensatory Time.

#### Fair Labor Standards Act Information

Beginning in the mid-nineteen eighties when the Fair Labor Standards Act became applicable to the public sector, non-exempt employees in the professional service became eligible for overtime compensation for work in excess of 40 hour per week. For this group of employees, the FLSA rules by their very nature supplant the Compensatory Time rules described above. For most employees they provide that an individual who works more than 40 hours per week must receive 1 ½ hours of FLSA compensatory time for every hour worked over 40. Once an employee has accrued 240 hours of FLSA compensatory time, the employee must be paid in cash at 1 ½ times regular pay. If, due to accrual usage, the employee's accrued FLSA compensatory time drops below 240 hours, then the employee again accrues time until the accumulation reaches 240 hours. Thus for employees who receive overtime, there would normally be no reason to deal with Compensatory Time since they already receive FLSA compensatory time.

#### Summary

1. Compensatory Time is only available when an employee is required to work above and beyond the normal professional obligation.
2. Compensatory Time can only be accrued and used following approval of management or a designated supervisor.
3. Compensatory Time is not calculated on a strict hour for hour basis.
4. A form is provided if an employee wishes to commemorate the use of Compensatory Time, such form to be retained at the most immediate organizational level.